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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

In re P.F., a Person Coming Under the Juvenile Court Law.	C094614
YUBA COUNTY HEALTH AND HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. S.F., Defendant and Appellant.	(Super. Ct. No. JVSQ 19-00082)

Appellant S.F. (grandfather) is the paternal grandfather of the infant minor P.F. Grandfather contends that the juvenile court erred by (1) denying his petition for

modification without an evidentiary hearing (Welf. & Inst. Code, § 388);[1] (2) denying his request for de facto parent status; (3) denying his motion to review documents under section 827; and (4) failing to apply relative placement preference after termination of parental rights.

Finding no error, we shall affirm the juvenile court's findings and orders.

FACTUAL AND PROCEDURAL BACKGROUND

We provide only the information relevant to determination of the issues on appeal.

Detention Though Termination of Parental Rights

In May 2019, the minor tested positive for methamphetamine and heroin at birth. Both parents admitted to using drugs. The minor was detained from both parents while she remained in the hospital receiving care. Butte County Children's Services (the Agency) filed a juvenile dependency petition on May 21, 2019, alleging that the minor came within the jurisdiction of the juvenile court under section 300, subdivision (b)(1) for the parents' failure to protect her. The Agency reported there were relatives to consider for placement; father identified his sister, T.D., as interested in placement.

The minor was detained on May 22, 2019. The jurisdiction hearing was held on June 5, 2019; the petition was sustained. The case was transferred from Butte County to Yuba County.

Yuba County Health and Human Services Department (the Department) filed a disposition report on July 19, 2019. The Department held a child family team (CFT) meeting on July 17, 2019; grandfather was present at the CFT meeting in addition to other family members. Concurrent planning was discussed and the parents stated that if they were unable to reunify with the minor, they wanted her to live with grandfather, the maternal grandfather, or the paternal aunt, T.D.

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[1] Further undesignated statutory references are to the Welfare and Institutions Code.

Grandfather contacted the Department on July 15, 2019, and requested to go through the resource family approval (RFA) process. He declined a home study of his current residence on the basis that he was seeking a rental home in Marysville or Yuba City. The Department completed and submitted an RFA referral for him.[2]

At the continued disposition hearing on August 7, 2019, the Yuba County juvenile court ordered the Department to provide reunification services to both parents. On November 27, 2019, (paternal aunt) T.D. filed a relative information form and sought adoption of the minor.

The Department filed a status review report on January 10, 2020, and reported various concerns regarding the parents' progress and that the minor was currently placed in foster care. The report also outlined the status of concurrent planning; as relevant here, the Department did not provide any information pertaining to grandfather as a placement option.

At the six-month status review hearing on January 22, 2020, the juvenile court found that return of the minor would create a substantial risk and ordered continued reunification services for both parents.

The Department filed a status review report on May 12, 2020, reporting that the parents had relapsed and recommending the court terminate reunification services as to both parents. The minor remained in her second foster placement, where she had been for 10 months. The foster parents reported that they were willing to provide permanency for the minor if needed.

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[2] Although the Department later represented to the juvenile court that grandfather had also self-reported a criminal history at or around this point and represents the same in its responsive brief, we do not see any other reference to this alleged self-report of criminal history in the record.

The Department reported T.D., located in Michigan, was involved and connected to the minor. An Interstate Compact on the Placement of Children (ICPC) request for T.D. and her family had been approved. The Department reported that the parents supported the minor's placement with T.D. as the concurrent plan, and that the minor's current foster family also requested to be considered for placement. The Department did not provide any information as to placement with grandfather as part of the concurrent planning process.

At the May 27, 2020, 12-month status review hearing, the parents submitted on the recommendation and supported the minor's placement with T.D. The juvenile court terminated reunification services and set a section 366.26 hearing for selection of a permanent plan and termination of parental rights. The court also ordered an assessment pursuant to section 366.3, subdivision (h) prior to the hearing. The court then granted the minor's foster parents de facto parent status.

In April 2020, the Department requested the juvenile court place the minor with T.D. The court held a placement hearing on June 10, 2020. The parents, the de facto/foster parents, and T.D. were present at the hearing. The court agreed with the Department that although the de facto/foster parents were also seeking placement, the current goal was for the minor to reunite with biological parents and, if not, then with a relative, as the minor's case was still in the reunification stage. Accordingly, the court found placement of the minor with T.D. was not contrary to her interests.

The minor was placed with T.D. on June 12, 2020. Per the adoption assessment, the State Department of Social Services determined the minor was likely to be adopted and recommended parental rights be terminated and plan of adoption ordered. During the review period, the Department reported no concerns regarding the minor's care. T.D. was committed to legally adopting the minor. The Department recommended termination of parental rights and a permanent plan of adoption be ordered.

The section 366.26 hearing took place on November 18, 2020. The juvenile court found that there was clear and convincing evidence that it was likely that the minor would be adopted and terminated parental rights; the minor remained placed with T.D. with a permanent plan of adoption.

Placement Changed From T.D. to De Facto/Foster Parents

On June 2, 2021, the Department informed the juvenile court that T.D. was no longer interested in adopting the minor. The minor was again placed with her de facto/foster parents.

Grandfather's Multiple Requests and the Subsequent Hearing

Grandfather filed a request for disclosure of the juvenile case file on July 6, 2021. He contended that review of the juvenile record was materially relevant and necessary to allow his counsel to prepare for "trial for" a relative placement motion pursuant to section 361.3. Grandfather also filed a de facto parent request and section 388 request to change court order, seeking placement of the minor. He contended the Department's action of removing the minor from T.D. presented changed circumstances and requested that the juvenile court immediately place the minor with him, order a placement assessment pursuant to section 361.3, and increase visitation. He asserted his requests were in the minor's best interest as he regularly visited with the minor while she was with T.D., as well as contacted T.D. regarding the minor's progress and well-being, and shared a bond with the minor. He stated he was willing and able to provide the minor with a permanent home while meeting all her physical, emotional, and financial needs.

The Department filed a "declaration in objection to de facto parent request" on July 15, 2021, first asserting that grandfather did not attend any of the parents' juvenile court hearings (detention, jurisdiction, disposition, review, placement, or selection and implementation) and that the parents did not ask for grandfather to be considered for placement. The Department then noted that after the minor's case was transferred to Yuba County, grandfather requested emergency placement of the minor and self-reported

that he had a criminal history and was concerned about his home being suitable for a baby. The Department also reported that grandfather did not submit the required paperwork or communicate with the Department to begin the RFA process, so his RFA referral was closed.

The Department noted that grandfather had not objected to the foster parents' previous designation as the minor's de facto parents or the placement hearing. Although grandfather had initially requested placement of the minor upon her removal from T.D., the Department did not place the minor with him because of his "previous statements that he had a criminal history" as well as his failure to remain in contact with the Department, and his failure to start the RFA process.[3] The Department argued grandfather could not be considered for de facto parent status because the court had previously designated the minor's foster parents as de facto parents, no motion to terminate their status had been filed, and they continued to meet all criteria for de facto parent status. Additionally, the Department argued grandfather was not eligible for de facto parent status because it was unaware of any recent visitation between grandfather and the minor, there was no evidence to suggest any psychological bond between grandfather and the minor, grandfather never lived with the child so could not fulfill the parental role, he did not have unique information about the minor, and he had failed to regularly attend the minor's juvenile court hearings.

At the July 22, 2021, hearing on grandfather's requests, grandfather did not appear, but counsel appeared and argued the various requests on his behalf. After hearing argument from all counsel, the juvenile court denied grandfather's section 827 petition,

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[3] As we have noted *ante*, these representations by the Department in its "Declaration in objection to [grandfather's] de facto parent request" and subsequent oral argument are the only reference to any criminal history for grandfather (as opposed to the *maternal* grandfather) in the record provided to us.

finding he had "not shown by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate needs of the petitioner." The court also denied grandfather's de facto parent request because there was not "sufficient information" to grant it and denied the section 388 petition because grandfather had "failed to make a prima facie showing that there has been a change in circumstance or that it would be in the best interest of the child."

The juvenile court also observed that the section 827 petition was rendered "kind of a non issue" by the denial of the request for de facto parent status.

Grandfather filed a timely notice of appeal. The case was assigned to this panel on February 25, 2022, and fully briefed as of March 8, 2022. The parties waived argument and the case was deemed submitted on June 9, 2022.

DISCUSSION

I

Section 388 Motion

Grandfather first contends the juvenile court abused its discretion in denying his section 388 petition without an evidentiary hearing. He claims the petition showed both a change in circumstances and that the requested modification would be in the minor's best interests. As we next explain, we disagree.

A section 388 petition must factually allege changed circumstances or new evidence to justify the requested order and that the requested order would serve the minor's best interests. (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) The petitioner has the burden of proof on both points by a preponderance of the evidence. (Cal. Rules of Court, rule 5.570(h)(1)(D).)[4] In assessing the petition, the juvenile court may consider the entire history of the case. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.) The

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[4] Undesignated rule references are to the California Rules of Court.

petition must be liberally construed in favor of its sufficiency. (Rule 5.570(a).) Nonetheless, if the juvenile court finds the petition fails to establish a prima facie showing of changed circumstances and best interests under section 388, the court may deny the petition without conducting an evidentiary hearing. (*In re Justice P.*, at p. 189; *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, 1413; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 806; see rule 5.570(d).)

We review the denial of a section 388 petition for abuse of discretion. (*In re S.R.* (2009) 173 Cal.App.4th 864, 870; *In re J.T.* (2014) 228 Cal.App.4th 953, 965.)

Grandfather's section 388 petition alleged: "[The minor] lived with maternal aunt [in] Michigan from June 2020 to June 2021, then [the Department] removed [the minor] from this placement and brought her back to California placing her in a foster home. Paternal grandfather requested placement but his requests were ignored by the social worker." He claims those allegations were sufficient to justify a hearing.

"[T]he term 'new evidence' in section 388 means material evidence that, with due diligence, the party could not have presented at the dependency proceeding at which the order, sought to be modified or set aside, was entered." (*In re D.B.* (2013) 217 Cal.App.4th 1080, 1093, quoting *In re H.S.* (2010) 188 Cal.App.4th 103, 105 [expert opinion based on evidence available at jurisdiction hearing did not constitute " 'new evidence' " within meaning of § 388].) A change in circumstances "must relate to the purpose of the order and be such that the modification of the prior order is appropriate. [Citations.] In other words, the problem that initially brought the child within the dependency system must be removed or ameliorated. [Citations.] The change in circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged order." (*In re A.A.* (2012) 203 Cal.App.4th 597, 612.)

Here, while the minor's placement itself had changed, grandfather's circumstances regarding the placement he sought did not change. He had not started the RFA process,

despite a referral from the Department early in the dependency proceedings. His inaction with respect to the RFA process and his ineligibility for placement had not changed at the time his petition was considered. Thus, grandfather did not allege that anything relevant to the *placement process* was changed.

Regarding the minor's best interests, grandfather's petition alleged: "[Grandfather] has been regularly visiting with [the minor] and they share a strong bond. It is in [the minor's] best interest to be place[d] with a relative who loves her and is willing to provide a safe home for her. [The minor] enjoys the visits with her grandfather and will benefit from this relationship and being parented by him on a daily basis. [Grandfather] is willing and able to provide for [the minor] a permanent home and meet all her physical, emotional, and financial needs."

In denying grandfather's petition, the juvenile court found no prima facie showing that the requested change of placement was in the minor's best interest. We agree that grandfather's reliance on the general assertion in his petition that it was in the minor's best interest to be placed with a relative without showing it was in her best interest to be placed with *him* specifically was insufficient. Grandfather did not establish a prima facie case such that the court was required to set an evidentiary hearing. Consequently, we see no abuse of discretion.

With respect to grandfather's claim that he was denied due process because the juvenile court denied his section 388 petition without a hearing, that contention has been forfeited because it was not raised in the juvenile court. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 222.) In any event, he has not established prejudice. "No judgment shall be set aside, or new trial granted, in any cause, . . . for any error as to any matter of pleading, . . . unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13.) As we explained above, grandfather failed to establish a prima facie case under section 388, thus the petition was properly

denied without an evidentiary hearing. Consequently, grandfather cannot demonstrate prejudice from the hearing's denial. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

II

Denial of De Facto Parent Status

Grandfather next contends the juvenile court erred when it denied his request for de facto parent status. Again, we see no error.

"Whether a person falls within the definition of a 'de facto parent' depends strongly on the particular individual seeking such status and the unique circumstances of the case. However, the courts have identified several factors relevant to the decision. Those considerations include whether (1) the child is 'psychologically bonded' to the adult; (2) the adult has assumed the role of a parent on a day-to[-]day basis for a substantial period of time; (3) the adult possesses information about the child unique from the other participants in the process; (4) the adult has regularly attended juvenile court hearings; and (5) a future proceeding may result in an order permanently foreclosing any future contact with the adult. [Citations.] If some or all of these factors apply, it is immaterial whether the adult was the 'child's current or immediately succeeding custodian.' [Citations.] Because a court can only benefit from having all relevant information, a court should liberally grant de facto parent status. If the information presented by the de facto parent is not helpful, the court need not give it much weight in the decisionmaking process." (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 66-67, fns. omitted.)

Rule 5.502(10) similarly defines a de facto parent as "a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period." Rule 5.534(a) provides in relevant part that: "On a sufficient showing the court may recognize the child's present or previous custodian as a de facto parent and grant him or her standing to participate as a party in the

dispositional hearing and any hearing thereafter at which the status of the dependent child is at issue."

The juvenile court makes its findings as to de facto parenthood by a preponderance of the evidence, and we review its findings for abuse of discretion. (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 381.) Here, we see no error.

Grandfather contends that "although the child [] has not lived with Grandfather, there is an argument as to the psychological bond existing with a biological grandparent" and noted that grandfather had some visits with the minor early in the dependency proceedings. But there is no evidence of any significant bond aside from grandfather's assertion, and no evidence of any recent visitation between grandfather and the minor. Grandfather never assumed the role of parent on a day-to-day basis; there is no evidence he possessed unique information about the minor; further, he failed to attend the minor's juvenile court hearings, including the hearing on his request for de facto parent status. He has failed to show the juvenile court abused its discretion.

III

Section 827 petition

Grandfather contends that because the juvenile court erred in denying the de facto parent status request and section 388 petition, the court erred in denying his section 827 petition to inspect the casefile. Again, we disagree.

Section 827 lists certain persons who may have unfettered access to juvenile court files and contains a provision for inspection by "[a]ny other person who may be designated by court order of the judge of the juvenile court upon filing a petition." (§ 827, subd. (a)(1)(Q).) While it is the intent of the Legislature that juvenile court records remain confidential, the policy of confidentiality is not absolute. (*In re R.G.* (2000) 79 Cal.App.4th 1408, 1414.) The juvenile court, which has both the "sensitivity and expertise" to make decisions regarding access to such records, has exclusive authority to determine when juvenile records will be released to anyone other than those

designated in section 827, subdivision (a)(1)(A) through (N). (*In re Anthony H.* (2005) 129 Cal.App.4th 495, 502.) We review the juvenile court's decision under section 827 for abuse of discretion. (*In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1541.)

Counsel qualified the request to inspect the casefile at the time he argued it, requesting that the section 827 petition "be granted if the Court is going to grant either . . . the de facto or the 388 petition." The juvenile court denied these two petitions, and we have found no abuse of discretion in those decisions. Grandfather is not otherwise a person entitled to disclosure pursuant to section 827, subdivision (a)(1), and we do not see how his request could properly be granted given the propriety of the related rulings. Accordingly, we reject grandfather's claim of error.

IV

Relative Placement Preference

Finally, grandfather contends the juvenile court erred in failing to apply relative placement preference under section 361.3. However, as we next explain, the preference no longer applied, as parental rights had been terminated.

The section 361.3 relative placement preference applies after the section 358 disposition hearing but *before* the termination of parental rights at a section 366.26 selection and implementation hearing. (§ 361.3, subd. (d); *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032.) Prior to termination of parental rights, when a child changes placements there is a preferential placement consideration in place for relatives who have not been deemed unfit or inappropriate and who will facilitate the service plan or permanent plan. (*Cesar V.*, at p. 1032.) But section 361.3 relative placement preference no longer applies after the section 366.26 hearing. (*In re Maria Q.* (2018) 28 Cal.App.5th 577, 597.)

Further, the relative placement preference "does not presume or require" that the child be placed with the relative; it only requires consideration of the relative for placement. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 320-321.) This case is

distinguishable from *In re R.T.* (2015) 232 Cal.App.4th 1284, cited by grandfather; in that case, the child welfare agency ignored the paternal relatives' repeated requests for placement--the first of which occurred when the minor was just weeks old--and refused to evaluate the relatives for placement. (*Id.* at pp. 1293, 1297-1299.) Here, grandfather abandoned his request for relative placement when he failed to start the RFA certification process after a referral from the Department. The claim of error fails.

DISPOSITION

The orders of the juvenile court are affirmed.

/s/
Duarte, J.

We concur:

/s/
Hull, Acting P. J.

/s/
Earl, J.